IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 468 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

AAMIRKHA KALEPA PATHAN

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Appearance:

MR IM PANDYA, AGP for Petitioners

MR SB BRAHMBHATT for Respondent No. 1, 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/04/2001

ORAL JUDGEMENT

#. List has been revised thrice but, none appears for

the respondents. No counter affidavits have been filed by them. As such, Shri IM Pandya, learned AGP has been heard.

#. In this petition, the order dated 5-9-2000 of the Authority under Payment of Wages Act, Kalol is under challenge.

#. The brief facts giving rise to this petition are that the respondent no.1 and the husband of respondent no.2 were in service of the petitioners. Their services were terminated. They challenged the termination order before the Labour Court, Kalol. Their challenge was accepted by the Labour Court, which rendered an award directing the reinstatement of the respondent no.1 and the husband of respondent no.2 with full backwages. The award of the Labour Court was rendered on 22-7-1992. In compliance of this award, the respondent no.1 and the husband of respondent no.2 were reinstated on 23-2-1994.

#. The dates given in English translation of the impugned award are hopelessly incorrect and is the result of carelessness either in passing the impugned award or in furnishing correct translation. At the time of reinstatement, birth certificates were demanded from respondent no.1 and the husband of respondent no.2, because the birth certificates of these employees were not available with the petitioners. Birth certificates were filed by them on 25-3-1994, in which, the date of birth of respondent no.1, Aamirkha Pathan is shown as 31-7-1931 and that of respondent no.2 as 1-4-1930. It is not in dispute that the age of superannuation of these employees was 60 years. Consequently, on completion of 60 years, they would have automatically retired. If, they were reinstated under some wrong impression and notion, they were to be reinstated under the orders of the Labour Court inspite of the fact that they had attained the age of retirement. It does not constitute any ground for awarding them backwages from the date of the impugned award till the date or retirement, namely, 25-3-1994. The moment the petitioner came to know that the two employees have already attained the age of superannuation on 31-7-1991 and 30-3-1990, they were retired forthwith on 25-3-1994.

#. On these factual events, the short point for consideration is, whether the Authority under Payment of Wages Act was justified in law in awarding backwages from 25-3-1994 till the date of award. In my opinion, the approach of the Authority under Payment of Wages Act is wholly erroneous. The age of retirement commence to run

from the date of birth and comes to an end on attaining 60 years, which is the age of superannuation. In the instant case, the two employees attained the age of superannuation on 31-7-1991 and 30-3-1990. Consequently, if they were reinstated under some mistaken notion on 23-2-1994, it will not mean that their age of retirement was extended to 25-3-1994. On the other hand, if they were retired on 25-3-1994 after they furnished the certificates of birth, they could not successfully claim backwages from 25-3-1994.

#. Shri IM Pandya, learned AGP argues that the entire dues up to the date of retirement have already been paid, which is also mentioned in the petition. As such, the impugned order is totally illegal and unjustified. The petition therefore succeeds and is hereby allowed. The impugned order Annexure-I is hereby quashed and set aside. No order as to cost.

24-4-2001. [ D.C. Srivastava, J.]

/sakkaf